IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE E. FELDMAN, d/b/a/ LAWRENCE E. FELDMAN AND Associates, Plaintiff,	:	
v.	:	CIVIL ACTION No. 06-cv-2540
GOOGLE, INC., Defendant.	:	

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT GOOGLE'S MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(6) or to TRANSFER PURSUANT TO 28 U.S.C. 1404

Plaintiff Lawrence E. Feldman (hereinafter "Plaintiff" or "Feldman"), submits the following Memorandum of Law in opposition to Defendant Google's Motion to Dismiss the Complaint Pursuant to Fed.R.Civ.P. 12 (b)(6).

I. INTRODUCTION

Beginning in January 2003, Plaintiff purchased advertising from defendant through Google's AdWords program. This program is keyword-triggered much like Google's traditional search engine, whereby a potential consumer/customer enters a keyword in Google's search engine, which creates a hierarchy of website links from businesses or other entities that signed up with AdWords or AdSense to have a website link to their business be among the search results. In this way, the consumer is likely to then "click" on the advertiser's web link and that advertiser will have the opportunity to sell its goods or services to that customer. The customer is charged when someone clicks on the link.

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This is widely known as "pay per click" advertising. While Google touts that advertisers can reach more than 80% of Internet users, the "pay per click" system has a serious flaw, known colloquially as "click fraud." Google calls it "improper clicks." Click fraud describes the use of software programs that automatically click on designated ads hundreds or thousands of times with the ill intent of driving up advertising costs. See Complaint ¶ 11.

Between January 2003 and December 31, 2005 Plaintiff was charged in excess of $100,000 but when Plaintiff contacted Google to request an investigation of the charges defendant refused stating that it does not keep records past the most recent three months. See Complaint ¶ ¶ 19, 22. This conduct on the part of Google, which was both widespread and pervasive, initiated a class action suit in Arkansas which was recently settled and approved in Arkansas on or about July 26, 2006. *See,* Notice of Class Action Settlement, attached hereto as Exhibit A. Plaintiff, a member of that settled class, timely opted out of this settlement when it appeared in the media prior to final approval, to pursue an individual suit in Pennsylvania which was originally filed on or about March 2006 in Philadelphia Common Pleas.

Defendant Google removed this matter to this Court and plaintiff filed an Amended Complaint in response to Google's motion to dismiss. The Amended Complaint alleged Breach of Implied Contract (Count I), Breach of the Implied Covenant of Good Faith and Fair Dealing (Count II), Fraudulent Inducement (Count III), Negligence (Count IV and Unjust Enrichment, (Count V). Google has moved only to dismiss plaintiff's Unjust Enrichment claim pursuant to Rule 12(b)(6).

Relying solely on a non-exclusive forum selection clause in an online form "contract" that was neither signed nor seen and negotiated by Feldman & Associates or anyone at his firm, Google further moves to transfer this case (a billing dispute resulting from Google's admitted click fraud problem) to California pursuant to 28 U.S.C. § 1404, even though it chose not to assert this same forum-selection clause in the Arkansas class action, whose class members were alleged to number in the hundreds of thousands . That case has resulted in a $90 million settlement. Plaintiff here seeks damages not in excess of $50,000.

Nowhere in the Settlement Notice does Google indicate or explain that all class members who opt out of the settlement will be compelled to litigate the claim in California, which it now suddenly urges, constructively barring many individual class members from redressing their damages in the forum of their choice. Defendant Google is further unable or unwilling to document the moment or method by which the Plaintiff signed any contract that included a forum-selection clause.

Because Google has not met its burden under the venue statute to transfer this billing dispute to California, its motion for transfer must be denied. Moreover, Google's motion to dismiss plaintiff's Unjust Enrichment claim must likewise be denied at this early stage of the of the proceedings.

II. ARGUMENT

A. Transfer Under 28 U.S.C. §1404 Is Not Warranted In This Case

In the present case Defendant Google moves to have this billing dispute transferred to Santa Clara California pursuant to 28 U.S.C. § 1404.

Pursuant to 28 U.S.C. § 1404(a), a district court has the discretion to transfer a civil action to any other district where the action could have been brought "for the convenience of the parties and witnesses, in the interests of justice." Section §1404(a) allows a court to "avoid the waste of time, energy and money and, in addition, to safeguard litigants, witnesses and the public against avoidable inconvenience and expense." *Liggett Group Inc. v. R.J. Reynolds Tobacco Co.,* 102 F.Supp.2d 518, 525-6 (D.N.J.2000) (citations omitted). A court must adjudicate a motion to transfer venue based on an "individualized, case-by-case consideration of convenience and fairness." *Van Dusen v. Barrack,* 376 U.S. 612, 622 (1964). The party seeking transfer bears the burden to establish the need for a transfer. *Jumara v. State Farms Ins. Co.,* 55 F.3d 873, 879 (3d Cir. 1995). This burden requires the movant "to show the proposed alternative forum is not only adequate, but also more appropriate than the present forum." *Hoffer v. InfoSpace.com Inc.,* 102 F.Supp.2d 556, 572 (D.N.J. 2000). Defendant Google has not met this burden.

Relying solely upon a forum selection clause in an online form on Google's website, and not a written agreement which the parties here negotiated at arms length, Google argues that plaintiff agreed to litigate any dispute it may have with Google in California. However, this is not the case.

Even assuming that the forum selection clause is valid, this does not destroy jurisdiction over this matter in this or other Pennsylvania courts especially when the clause contains language that is permissive as opposed to mandatory.[1] Arguably, it also contemplated jurisdiction in state, not federal court, although Google removed this matter from Philadelphia Common Pleas Court.

Courts here and in California hold that where the language of a forum selection clause is not mandatory, the parties are not exclusively limited to litigate their disputes in only one forum. *See e.g.,* Lucent Technologies, Inc. v. Dicon Fiberoptics, Inc., 2006 WL 2290552 (D.N.J. 2006) (Sl. Op.)(attached hereto)(New Jersey court held forum selection clause which failed to contain exclusive language did not bar transfer of the case to North

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[1] The clause provides in part: **Miscellaneous:** The Agreement must be construed as if both parties jointly wrote it, governed by California law except for its conflicts of laws principles and adjudicated in Santa Clara County, California.

Carolina). "[A] clause wherein a party consents to the jurisdiction and venue of a remote tribunal without more falls far short of a clause vesting *exclusive* jurisdiction over all the parties' dealings in that tribunal." *Id., quoting Zokaites v. Land-Cellular Corp.,* 424 F.Supp.2d 824, 835 (W.D.Pa.2006)). "[T]his is so even where such a clause is accompanied by a choice of law provision making that state's law applicable to the agreement." *Id.*; *Hunt Wesson Foods, Inc. v. Supreme Oil Company,* 817 F.2d 75, 77 (9th Cir.1987) (absent "exclusive jurisdiction" language, "forum selection clause is permissive rather than mandatory").

Where parties consent to jurisdiction in a particular forum, they do not preclude the jurisdiction of other forums and the existence of such a clause does not present a basis for dismissal of the other action under Rule 12(b)(6). *Godwins v. DeMarco,* 1991 WL 87213(E.D. Pa. 1991), citing *Polsky v. Hall City Centre Assoc. Limited Partnership*, 1989 WL 48109, 3 (E.D. Pa. May 4, 1989); *Ramada Worldwide, Inc. v. Bellmark Sarasota Airport, LLC,* 2006 WL 1675067, 3 (D.N.J. 2006)(, (Sl. Op.)(attached hereto)(the non-exclusive forum-selection clause is not the only determinative or dispositive factor to be considered in evaluating a motion to transfer venue, and does not trump convenience of the witnesses and public interests); *Kachal, Inc. v. Menzie,* 738 F.Supp. 371(D.Nev.1990)(forum selection clause which failed to contain the words "exclusive" or "only" fell short of designating an exclusive forum and did not preclude litigation outside Nevada.).

The forum selection clause Google asserts fails to contain the requisite mandatory language and thus is not determinative of the motion to transfer pursuant to 28 U.S.C. 1404. Consequently, jurisdiction in this Court is entirely appropriate under the standards set forth in the venue statute.

The forum-selection clause, especially when permissive, is not the only determinative or dispositive factor to be considered in evaluating a motion to transfer venue, and does not trump convenience of the witnesses and public interests. *Ramada Worldwide, Inc. v. Bellmark Sarasota Airport, LLC*, 2006 WL 1675067 at 5 (D.N.J. 2006). Proper weight must be given to the Plaintiff's initial choice of forum, as it "is a paramount consideration in any determination of a transfer request." *Shutte v. Armco Steel Corp.* 431 F.2d 22, 25 (3rd Cir. 1970).

Applying these principles, the plain facts preclude the suggested transfer. Those facts are: Plaintiff is a business located in this judicial district; all of plaintiff's witnesses and key documents are located here. Feldman & Associates purchased the advertisements in Pennsylvania and the errant billing for fraudulent clicks which gives rise to this claim arose in Pennsylvania. Google is an international corporation that advertises and does substantial business in this jurisdiction. . Therefore, Google is amenable to suit under the Pennsylvania long-arm statute, 42 Pa.C.S.A. § 5322. The exercise of jurisdiction by Pennsylvania is also constitutional under federal law: Google has purposefully availed itself of the privilege of conducting activities within the Commonwealth thus invoking the benefits and protections of its laws. *E.g., Burger King v. Rudzewicz,* 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).

Hence, hailing Google into this Court does not offend notions of due process and other concerns as Google has the necessary minimum contacts with Pennsylvania for this Court to have personal jurisdiction over it.

Moreover, the fact that Google litigated and then settled a $90 million dollar class action lawsuit in Arkansas,(apparently choosing not to assert its forum selection clause in that class action) makes Google's present transfer motion seem disingenuous and solely designed to harass plaintiff for asserting his rights in this appropriate and convenient forum. Transferring this individual case to California would make it prohibitively difficult for Feldman litigate its claim.[2] Moreover, Plaintiff's owner, Lawrence E.Feldman, Esquire recently, for health reasons, is unable to appear in court or undertake strenuous activity. Litigating a billing dispute in California would be unduly burdensome for Mr. Feldman for this additional reason.

Finally, transfer of this case to California sets a dangerous precedent for all other Pennsylvania-based advertisers who opt out of the Arkansas class settlement, as Google will undoubtedly attempt to transfer any additional opt-out cases that may be commenced here to the West Coast. This goes against this Court's public policy to protect the legal rights of citizens in this jurisdiction. In the interests of justice, this Court must deny Google's motion for transfer.

B. Imposing a Forum Selection Clause at this Point in Litigation Is a Violation of Rule 23(e) of Fed.R.Civ.Proc.

Imposing a forum selection clause at this point in the litigation violates Fed. R. Civ. Proc. 23(e). Plaintiff Feldman did not receive adequate notice of its opt out rights in accordance with Rule 23(e). Under Subsection (B), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." This notice must inform class members of the existence of the pending litigation and provide them with the information "needed to decide, intelligently, whether to stay in or opt out." *Amchem Prods. v. Windsor,* 521 U.S. 591, 628, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997); see also *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 812, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985) (stating that class members must be provided with meaningful notice and an opportunity to exclude themselves from the class); cited in *In re Diet Drugs,* 282 F.3d at 230-31; *see also Shutts,* 472 U.S. at 811-12, 105 S.Ct. 2965 (setting forth "procedural due process protection[s]" necessary in order for a class action judgment to have binding force on absent class members.

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[2] Google's reliance upon the fact that the Feldman firm is litigating a case in California lends no support to its argument that the Feldman firm would not be inconvenienced if this matter were transferred to California when all of the key witnesses and documents are located here in Pennsylvania. Moreover, Feldman & Associates is not lead counsel in the California matter, *Hapner v. Sony Corp.*, presently pending in California and the Pennsylvania-based firms involved in that matter retained local counsel for convenience and to limit the cost and expense of litigating a case on the West Coast. Finally, *Hapner*, is a resident of California and therefore the case was filed in that State.

The Settlement Notice (Exhibit "A") by which Plaintiff Feldman opted out of the class action suit, brought against Google in Arkansas, does not state that any individual litigation would require bringing suit in Santa Clara County, California. If the position that the defendant now asserts is true and the forum selection clause controls this suit then Google has failed to inform a class member in a settlement notice opting out of the settlement and bringing an individual suit would require litigation in a specific forum, on the other side of the country, which is information "needed to decide, intelligently, whether to stay in or opt out." This is a violation of Fed.R.Civ.P 23(e) and of the Plaintiff's procedural due process rights and another reason to deny Google's present motion to transfer.

C. **Google's Alleged "Click-Wrap" Contract Is One of Adhesion**

The writing Google seeks to assert is an adhesion contract and therefore its forum selection clause is presumptively invalid. In the Amended Complaint, plaintiff has alleged breach of an implied contract, and not breach of the written agreement upon which Google bases its motion for transfer. [3] Assuming *arguendo,* that Google's "writing" controls here, the manner in which Google contracts with potential advertisers, by use of an online form that potential advertisers must assent to without signing and without the opportunity to negotiate any of its terms in order to be able to use Google's Adwords service, meets the definition of an contract of adhesion.

[3] Google does not seek to dismiss plaintiff's implied contract claim, only the unjust enrichment claim.

An adhesion contract is a form or standardized contract prepared by one party, to be signed by the other party in a weaker position who has little choice regarding its terms and without the opportunity to negotiate or bargain its terms. *McNulty v. H&R Block, Inc.* 843 A.2d 1267, 1273 (Pa.Super. 2004); *Lytle v. CitiFinancial Services, Inc.,* 810 A.2d 643, 658 (Pa.Super. 2002); *Todd Heller, Inc. v. United Parcel Service, Inc.,* 754 A.2d 689 700 (Pa Super., 2000).[4] Here, Google offered its form contract on a "take it or leave it" basis to Feldman & Associates without affording it a realistic opportunity to bargain and under such conditions that it could not obtain the Adwords product or services except by acquiescing.

Moreover, actual knowledge of the inclusion of a forum selection clause in the form contract came after the Plaintiff exercised his right to opt out of the class action suit pending in Arkansas, not California, when news of the settlement appeared in the media, and prior to commencing this action. This negated the "meeting of the minds" involved in traditional contract formation. Now, relying exclusively on the forum selection clause, Defendant Google insists upon transferring a billing dispute from plaintiff's forum to the Santa Clara County, California even though it defended and ultimately settled a multi-million dollar class action outside the Santa Ana courts.

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[4] Similarly, under California law, defines a contract of adhesion as "a standardized contract, which imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." *Armendariz v. Foundation Health Psychcare Serv.,* 24 Cal.4th 83, 113, 99 Cal.Rptr.2d 745, 6 P.3d 669 (2000).

D. Google's Forum Selection Clause Was Unconscionable and Must be Stricken

Once a contract is deemed to be one of adhesion, its terms must be analyzed to determine whether the contract as a whole, or any specific provisions, are unconscionable. *Denlinger, Inc. v. Dendler,* 608 A.2d 1061, 1067 (Pa.Super. 1992), *Bishop v. Washington,* 480 A.2d 1088, 1094-5 (Pa.Super.1984). See also 13 Pa.C.S.A. § 2302. Here, Google's forum selection clause is unconscionable.

Unconscionability requires a two-fold determination: that the contractual terms are unreasonably favorable to the drafter and that there is no meaningful choice on the part of the other party regarding acceptance of the provisions. *Lytle v. CitiFinancial Services, Inc.,* 810 A.2d 643, 658 (Pa.Super. 2002), See also 13 Pa.C.S.A. § 2302. [5] California courts have specifically cited lack of mutuality in contract formation as grounds for holding a clause substantively unconscionable and therefore, unenforceable. *Armendariz v. Foundation Health Psychcare Serv.,* 24 Cal.4th 83, 99 Cal.Rptr.2d 745, 6 P.3d 669 (2000)(adhesive agreement to arbitrate will satisfy this general standard for substantive unconscionability if the agreement lacks a "modicum of bilaterality"). The level of bilaterality is determined by an examination of the actual effects of the challenged provisions. *Ellis v. McKinnon Broad. Co.,* 18 Cal.App. 4th 1796, 1803-4 (1993).

Applying these precepts here, Google's online "click-wrap" contract has numerous unilateral clauses in addition to the forum selection provision, which a party with any real bargaining power would never agree to. For example, the contract "disclaims all warranties, express or implied, including without limitation for noninfringement, merchantability and fitness for any purpose" and limits all liability, except for a customers failure to make a payment, "for any consequential, special, indirect, exemplary, punitive, or other damages whether in contract, tort or any other legal theory, even if advised of the possibility of such." To escape the stigma of a contract of adhesion Google drafted this section begins "The Agreement must be construed as if both parties jointly wrote it…" *See* Complaint ¶ 4.

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[5] California law holds that a clause is procedurally unconscionable if it is a contract of adhesion. *Flores v. Transamerica HomeFirst, Inc.,* 93 Cal.App.4th 846, 853 113 Cal. Rptr. 376 (2001).

Combined with Google's forum selection clause (which plaintiff contends does not limit jurisdiction to the courts of Santa Clara County), the effect of these contract provisions is to discourage meritorious litigation on such a simple matter as a billing dispute, which this case is, by creating a cost prohibitive scenario for the potential customer with a legitimate complaint.

Additionally, the availability of other internet service providers does not compromise the existence of a contract of adhesion in the present case. *Comb v. Paypal, Inc.*, 218 F.Supp.2d 1165, 1173 (N.D. Cal. 2002), quoting *Armendariz, supra,* 24 Cal.4th at 113 (rejecting argument that contract between employer and employee was not adhesive because employer demonstrated existence of alternative sources of employment that were not conditioned on the acceptance of an arbitration clause). Here in this case, only one other service, Yahoo, offered comparable advertising and Yahoo is also being sued for click fraud in a class action , and has a similar sign up system as Google's.

There is absolutely no indication from the record that any consideration existed for agreeing to the forum selection clause. The forum selection clause was simply not an aspect of the agreement for which the parties bargained. These contractual provisions, lacking both consideration and true consent on the part of the Plaintiff, if followed create an agreement that lacks even a "modicum of bilaterality."

According to the application of relevant law in the Third Circuit and California the online "click-wrap" contract that Google forces its customers to assent to unconscionable clauses.

If the court so finds as a matter of law that the contract or any clause of the contract is unconscionable at the time that it was made, the court may refuse to enforce the contract. *See* 13 Pa.C.S.A. § 2302. Because Google's "click wrap" contract is unilateral in its terms, no true arms-length negotiation over the forum select clause occurred, and no consideration was given for acceptance of the clause, the provision must be stricken.

E. **Dismissal of the Unjust Enrichment Claim Pursuant to Fed. R. Civ. Proc. 12(b)(6) is Unwarranted Here**

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), this Court must accept all allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 (3d Cir.1997). The motion to dismiss will be granted "only if it appears to a certainty that no relief could be granted under any set of facts which could be proved." *D.P. Enterprises, Inc. v. Bucks County Community College,* 725 F.2d 943, 944 (3d Cir.1984).

Contrary to Defendant Google's argument, the unjust enrichment claim should not be dismissed with prejudice at this early point in the proceedings. Plaintiff is permitted under the Federal Rules of Civil Procedure to plead alternative theories of recovery. *See,* Fed.R.Civ.P. 8(a)(3) which states that relief in the alternative or of several different types may be demanded. *Gonzalez v. Old Kent Mortg. Co.* 2000 WL 1469313 E.D.Pa.,2000. Here, the parties disagree as to whether an enforceable writing exists, such that plaintiffs alternative claim for unjust enrichment must not be dismissed unless and until this Court rules upon the existence and validity of the writing Google seeks to assert here. Dismissing Plaintiff's alternative claims with prejudice when relief is arguably available would abrogate the Plaintiffs substantive legal rights by forcing Plaintiff Feldman to elect his remedy at the pleading stage. See *Matter of Century Glove, Inc.*, 151 B.R. 327 (Bkrtcy.D.Del.,1993).

III. CONCLUSION

For the above mentioned reasons Plaintiff Feldman & Associates respectfully requests that this Court deny Google's Motions to Dismiss and to Transfer this matter to the Northern District of California.

LAWRENCE E. FELDMAN & ASSOCIATES

By: ______________________
Lawrence E. Feldman, Esq.
William E. Angle, Esq.
432 Tulpehocken Ave.
Elkins Park, PA 19027

Attorneys for the Plaintiff,
Lawrence Feldman d/b/a
Feldman & Associates

CERTIFICATE OF SERVICE

The undersigned, counsel for Lawrence E. Feldman & Associates hereby certifies that a true and correct copy of the foregoing Memorandum of Law in Opposition to Defendant Google's Motion to Dismiss or to Transfer was sent via facsimile and first class mail this day to the following individual(s):

Jeffrey M. Lindy
1800 J.F.K. Boulevard, Suite 1500
Philadelphia, Pennsylvania 19103
Tel: 215.575.9290

Attorney for Defendant Google, Inc.

Date: 9/13/06

BY: ______________________
William E. Angle, Esquire

EXHIBIT A

Notice of Pendency and Settlement of Class Action, Settlement Hearing and Claims Procedure

This court-ordered notice may affect your legal rights. Please read it carefully.

If you purchased online advertising from Google between January 1, 2002 and the present, you are a class member in a class-action lawsuit, *Lane's Gifts and Collectibles et al. v. Google, Inc. et al.*, Case No. CV-2005-52-1, in the Circuit Court of Miller County, Arkansas. This notice is to inform you of the Court's certification of a class; the nature of the claims alleged; your right to participate in, or exclude yourself from, the class; a proposed settlement; and how you can claim an award of advertising credits under the settlement. **If you purchased online advertising from Google on behalf of another party, please forward this notice to the advertiser.**

- The settlement will provide advertising credits to class members who certify that they were the victims of "click fraud" or other invalid or improper clicks on online advertisements purchased from Google on or after January 1, 2002.
- The settlement will resolve claims that Google breached its contracts with advertisers and violated other laws by failing to adequately detect and stop "click fraud" or other invalid or improper clicks on online advertisements.
- If you are a member of the class, your legal rights are affected by whether you act or do not act.

YOUR LEGAL RIGHTS AND OPTIONS	
Do Nothing	You will automatically be eligible to submit a claim form for Google advertising credits and will give up your ability to sue Google over the subject matter of this case.
Exclude Yourself	You will not be able to submit a claim form for Google advertising credits. This is the only option that allows you to bring or participate in another lawsuit against Google about the subject matter of this case.
Object	Write to the Court and parties about why you don't like the settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Awards of advertising credits will be made only if the Court approves the settlement. If someone appeals from the Court's approval of the settlement, awards of credits will not occur until the appeal is resolved.

WHAT IS THIS CASE ABOUT?

Plaintiffs Lane's Gifts and Collectibles and Max Caulfield d/b/a Caulfield Investigations allege that Google breached its contracts with class members, unjustly enriched itself, and engaged in a civil conspiracy by failing to adequately detect and stop "click fraud" or other invalid or improper clicks on online advertisements. Google denies plaintiffs' allegations and contends that all payments that it has received from class members for online advertising were legally and properly charged, and that it has neither breached its contracts with class members nor violated any other law through the actions alleged in the case. The Court has not made a determination whether plaintiffs' or Google's contentions are correct.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of plaintiffs or Google. Instead, both sides agreed to a settlement. That way, both sides avoid the cost and uncertainty of further litigation.

AM I AFFECTED BY THE SETTLEMENT?

If you fit within the definition of the class that the Court has certified, then you are a member of the class and you will be affected by the settlement. The class that the court has certified is defined as:

> All persons or entities, together with any officer, employee or agent of the same, that purchased advertising on the Internet from Google on or after January 1, 2002, regardless where the ad was displayed.

WHAT WILL I GET FROM THE SETTLEMENT?

Under the settlement, Google will establish a $90 million settlement fund, of which a portion will be used to pay class counsel's fees and costs, and the remainder will be available to class members in the form of advertising credits that may be applied to up to 50% of the cost of future online advertising purchased from Google. To receive credits, you must submit a valid and timely claim form. Credits will be awarded on a *pro rata* basis, taking into account the amount that you paid to Google for the ads and the total amount of credits available. For example, if the amounts that you paid to Google for the affected ads were 1% of Google's revenues from online advertising since January 1, 2002, you would be eligible to receive 1% of the total available credits. You must certify in your claim form the percentage of your ads you believe were affected by "click fraud".

HOW DO I SUBMIT A CLAIM FORM?

To receive a claim form, visit the following website **between June 19, 2006 and August 4, 2006** and enter the requested information.

www.clicksettlement.com

If you do not submit your Claim Form by August 4, 2006, your claim will be deemed late and will be rejected.

WHAT ARE THE ATTORNEYS GOING TO BE PAID?

The Court will decide the amount of fees to be paid to class counsel and the extent to which the expenses that they incurred in working on the case should be reimbursed. Class counsel intend to seek a maximum of 33 ⅓ percent of the settlement fund, or $30 million, in attorneys' fees and expenses in this case. Under the settlement, Google has agreed that it will not oppose an award of up to $30 million to class counsel.

WHEN WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court has scheduled a hearing on July 24 and 25 beginning at 9:00 a.m. to consider whether the settlement is fair, reasonable and adequate and to determine the amount of the fees and expenses to be awarded to class counsel. The hearing will be held in the Juvenile Courtroom at 305 E 5th Street, Texarkana, Arkansas 71854. It is possible that the hearing may be postponed.

HOW DO I REMAIN A CLASS MEMBER?

You do not need to do anything to remain a class member. You will be bound by all orders and judgments of the Court, whether favorable or not. You will be represented by class counsel. You do not have to pay class counsel.

If you remain in the class, you will be eligible to submit a claim form for Google advertising credits online between June 19, 2006 and August 4, 2006. In return you will be giving up any claim for damages against Google relating to the subject matter of this case.

WHAT AM I GIVING UP TO RECEIVE ADVERTISING CREDITS OR STAY IN THE CLASS?

Unless you exclude yourself (opt out), you are staying in the class, and that means you can't sue, continue to sue, or be part of any other lawsuit against Google relating to the subject matter of this case. It also means that all of the Court's orders will apply to you and legally bind you. The legal issues in this case involve allegations that Google breached its contracts with advertisers and violated other laws by failing to adequately detect and stop "click fraud" or other invalid or improper clicks on online advertisements.

Any member of the class who does not opt out fully and finally releases and waives all claims, demands, rights, liabilities, and causes of action of any nature that were asserted or might have been asserted, under any law whatsoever, that arise out of, relate to, or are in connection with the legal claims against Google in this case, or any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could be the basis of claims that the monies Google received for online advertising on or after January 1, 2002 should not have been charged, received or held by Google. Class members who do not opt out also fully and finally release all of those same matters against all of Google's partners who published online ads provided by Google.

HOW DO I EXCLUDE MYSELF (OPT OUT) FROM THE CLASS?

You may exclude yourself (opt out) from the class if you mail a signed letter asking to be excluded from the Class to the following address:

Google Settlement Opt Out
c/o Gilardi & Co. LLC
P.O. Box 808070
Petaluma, CA 94975-8070

The letter asking to be excluded must be postmarked no later than thirty (30) days after the date this Notice was sent. If you are excluding yourself, the letter must contain your name and address and say that you want to be excluded from the settlement. If you are excluding your company, your letter must contain your company's name and address, your position in the company, and a statement that you are authorized to act on behalf of the company. **If you exclude yourself (opt out), you will not participate in the settlement or receive any of the benefits of the settlement.** If you wish to remain a class member, DO NOT send a letter asking to be excluded.

HOW DO I OBJECT TO THE SETTLEMENT OR THE ATTORNEYS' FEES?

If you don't like the settlement and wish to object, you must say so **in writing**. Mail a letter saying what you do not like about the settlement to all of these addresses:

Clerk of the Miller County Circuit Court 400 Laurel Texarkana, AR 71854	George L. McWilliams Patton, Roberts, McWilliams & Capshaw, LLP 2900 St. Michael Drive, Fourth Floor Texarkana, TX 75503
Daralyn J. Durie Keker & Van Nest, LLP 710 Sansome St. San Francisco, CA 94111	

The deadline for objection is thirty (30) days after the date this Notice was sent. If you want to object, you must mail your letter early enough so that it is received by the deadline.

If you make an objection by the deadline, and you also want to speak at the hearing, you must ask the Court for permission to do so. You may choose to be represented by counsel, but you will have to pay that counsel.